United States Postal Service *and* American Postal Workers Union Local 739, AFL–CIO. Case 16–CA–22930(P)

August 27, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On July 29, 2004, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief.[1] The General Counsel filed an answering brief to which the Respondent filed a reply brief.[2]

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified below.[3]

[1] There were no exceptions to the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) four times between May and June 2004 by failing and refusing to provide relevant information requested by the Union.

[2] The General Counsel also filed a motion for special leave to file a surreply to the Respondent's reply brief. In consideration of the need for administrative finality, however, surreply briefs are generally not permitted, "except by special leave of the Board." See Sec. 102.46(h) of the Board's Rules and Regulations. Here, no circumstances were presented by the General Counsel warranting special leave; therefore, the General Counsel's motion to file a surreply brief is denied. *Baker Electric*, 330 NLRB 521 fn. 4 (2000).

[3] We shall modify the judge's recommended order by deleting the paragraph ordering that the notice be read to unit employees. The violations in this case are not so numerous and serious to require this special remedy. *Postal Service*, 339 NLRB 1162, 1163 (2003). We also shall modify the judge's recommended order by limiting application of its notice posting and conditional mailing provisions to the postal facility located at 430 W. State Highway 6 in Waco, Texas, where the violations at issue in this case occurred.

Finally, we shall modify the judge's recommended order by deleting the paragraph ordering that the Respondent, upon request by the Union, reintroduce in the grievance procedure grievances that were lost because the Respondent did not provide requested information to the Union and that the Respondent accord the Union the opportunity to supplement those grievances with the information the Respondent is ordered to provide to the Union. Imposition of this remedial provision in this case would not effectuate the policies of the Act. *Postal Service*, 341 NLRB No 100, slip op. at 14 (2004); P*ostal Service*, supra, 339 NLRB at 1173.

We shall additionally substitute a new notice conformed to the language of the modified Order.

Broad Order

We agree with the judge's recommendation to provide broad injunctive language in our Order, enjoining the Respondent from "in any other manner" violating the Section 7 rights of employees at the Waco postal facility involved here. In *Hickmott Foods*, 242 NLRB 1357, 1357 (1979), the Board stated that a broad cease-and-desist order is warranted "when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." In this instance, we find that the Respondent's proclivity to violate the Act justifies imposition of a broad order.[4]

We do not agree with our dissenting colleague's contention that a broad order in this case is inappropriate under *Hickmott* or *NLRB v. Express Publishing Co.*, 312 U.S. 426 (1941). We recognize that "to justify an order restraining other violations, it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past." *Express Publishing*, 312 U.S. at 437. As explained by the Court in a subsequent case, *Express Publishing* "recognized that it was within the power of the Board to make an order *precisely like* 1(b) [the broad order at issue here]. It merely held that whether such an inclusive provision as 1(b) is justified in a particular case depends upon the circumstances of the particular case before the Board." *NLRB v. Cheney California Lumber Co.*, 327 U.S. 385, 387 (1946) (emphasis added).[5] In another case, the Court confirmed that the Board has the same remedial authority in equity as courts, including the authority to issue "injunctions in broad terms . . . *even in acts of*

[4] Accord: *Southwire Co. v. NLRB*, 393 F.2d 106 (5th Cir. 1968); *Grinnell Fire Protection Systems*, 335 NLRB 473 (2001); *Visiting Nurse Services of Western Massachusetts*, 325 NLRB 1125, 1133 (1998), enfd. 177 F.3d 52 (1st Cir. 1999), cert. denied 528 U.S. 1024 (2000); *Control Services*, 314 NLRB 421 (1994).

[5] As described by the Court, the respondent in *Cheney* did not file exceptions to a Board trial examiner's report finding violations of the Act and recommending, inter alia, a broad cease-and-desist order provision "on the basis of his review of past hostilities by the company against efforts at unionization." 327 U.S. at 387. The Board adopted the report pro forma. When the Board petitioned for enforcement, the 9th Circuit sua sponte deleted this provision from the order. The Supreme Court reversed, holding that when the Board has not "patently traveled outside the orbit of its authority," id. at 388, the circuit court lacked authority to modify the Board's order absent a showing within the statutory exception of "extraordinary circumstances" excusing the respondent's failure to urge an objection before the Board. Obviously, the Court determined that the broad order was not "patently outside" the Board's authority. Accord: *NLRB v. Ochoa Fertilizer Corp.*, 368 U.S. 318, 322 (1961).

widest content when [it] deems them essential to accomplish the purposes of the act.“ *May Department Stores Co. v. NLRB*, 326 U.S. 376, 391 (1945) (emphasis added).[6]

Our dissenting colleague says that the Supreme Court, in *Express Publishing*, did not endorse orders which restrain “any” violation of the Act. However, as noted above, the Supreme Court in *Cheney* did find that such an order is within the authority of the Board. Moreover, under *Hickmott*, such orders are appropriate and have been entered. No court has overturned any such order on the ground that the Board lacks the legal authority to issue one under the circumstances described in *Hickmott*.

Guided by the aforementioned precedent, the Board adopted the *Hickmott* standard to define two situations in which a broad cease-and-desist order is “essential to accomplish the purposes of the [A]ct,” i.e., a respondent either manifests a proclivity to violate the Act or it engages in egregious or widespread misconduct. In either situation, the Board reviews the totality of circumstances to ascertain whether the respondent’s specific unlawful conduct manifests “an attitude of opposition to the purposes of the Act to protect the rights of employees generally,” id., providing an objective basis for enjoining a reasonably anticipated future threat to any of those Section 7 employee rights.[7]

Our remedial focus in the present case is on the Respondent’s proclivity to violate the Act. A broad order is certainly not warranted in every instance of recidivist misconduct. On the other hand, it is not necessary that a recidivist respondent have committed unfair labor practices under different subsections of Section 8 of the Act before a broad order is warranted.[8] Our dissenting colleague concedes that the Board has the authority to issue a broad order for recidivist violations of a single subsection of Section 8, but he contends that the Respondent’s repeated violations of its statutory duty to provide information do not meet the standards for a broad order. We disagree.

We find several factors that support imposition of a broad order in the circumstances of this case. First, the Board has now found that, in less than two years, the Respondent twice committed a series of Section 8(a)(5) violations at the same Waco facility. In the first case,[9] the Respondent failed to furnish information in response to seven separate union requests from July 2001 through February 2002 and unreasonably delayed responding to five other requests. In the present case, the Respondent failed to furnish information in response to four separate requests from May 4 through June 1, 2003. Second, the violations in this case took place after the Board issued an uncontested narrow cease-and-desist order in the prior case, suggesting the inadequacy of this order to deter future violations of employee rights. Third, when a union’s information requests pertain to grievance investigations, as in both Waco cases, the Respondent’s repeated unlawful refusals to provide such information have the potential to hide other misconduct, including other statutory violations.[10] Fourth, the Respondent presented a weak defense of its actions in each case.[11] Fifth, the vio-

[6] The Court held in *May Department Stores* that a broad order was not appropriate to remedy a Sec. 8(a)(5) refusal to bargain violation and a Sec. 8(a)(1) wage increase violation. However, the language quoted above from the Court’s decision clearly supports the proposition that the Board can, and in some instances should, broadly enjoin violations of statutory provisions. “Decrees of that generality are often necessary to prevent further violations where a proclivity for unlawful conduct has been shown.” *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1948), citing, inter alia, *May Department Stores*.

[7] Chairman Battista believes that the *Hickmott* standard, properly applied, is consistent with the Supreme Court’s decision in *Express Publishing* and within the scope of the Board’s remedial authority set forth in Sec. 10(c). In his opinion, the Board has the power to issue broad orders but that power should be exercised sparingly. For reasons stated in this decision, he agrees that this case warrants a broad order.

[8] See, e.g. *Postal Service*, supra, 339 NLRB 1162 (broad order appropriate in light of respondent’s history of violating Sec. 8(a)(5) by failing to provide requested relevant information at many of its locations); *Iron Workers Local 433 (United Steel)*, 293 NLRB 621, 623 (1989), enfd. 930 F.2d 28 (9th Cir. 1991) (broad order appropriate in light of respondent union’s history of Sec. 8(b)(4)(B) violations in three cases).

[9] *Postal Service*, 2002 WL 31046011. In the absence of exceptions, the Board adopted the judge’s decision on October 25, 2002. In a June 3, 2003, unpublished decision, the United States Court of Appeals for the Fifth Circuit summarily enforced the Board’s order. A judge’s decision to which no exceptions are filed may be considered as evidence that a respondent has a proclivity to violate the Act. *Postal Service*, supra, 339 NLRB at 1162 fn. 2.

The dissent suggests that, instead of imposing a broad order against the Respondent in this case, the Board should have initiated contempt proceedings against the Respondent based on the narrow order in the above-mentioned case. Without passing on the general merits of this approach, we note that proceeding in contempt was not an option inasmuch as the acts alleged as unfair labor practices here took place prior to the court’s enforcement of the order in the prior case.

[10] Cf. *Bowles v. Leithold*, 155 F.2d 124 (3d Cir. 1945). In an action brought by the Federal government for violations of employer record-keeping provisions of the wartime Emergency Price Control Act, the Third Circuit held that a district court’s injunction of future price ceiling violations was permissible under the *Express Publishing* doctrine, stating that “[a] defendant who has thus made it practically impossible for anyone to tell whether he is violating price ceilings or not, by withholding the fundamental information, is not unlikely to violate those ceilings under cover of the darkness which his failure to give information has created. At least it is not unreasonable for one to conclude that such a happening is within the range of probability and to guard against it by injunction.” Id. at 127.

[11] For instance, as the judge in this case has observed, the Respondent persisted in maintaining that the Union failed to explain the relevance of requested OMSS reports even after the Respondent failed to

lations at Waco must be considered against a background of two decades of widespread and repeated information request violations by the Respondent in several locations nationwide.[12] These violations augur continued defiance of Respondent's bargaining obligations and interference with employees' statutory rights unless the Respondent is subject to a broad order. Sixth, the Board has recently issued broad cease-and-desist orders against Respondent for similar repeated information request violations at its Houston area facilities[13] and at a facility in Coppell, Texas.[14] The Fifth Circuit Court of Appeals has enforced two broad orders against the Respondent for repeated information request violations in the Houston area.[15] In fact, in one of those cases, and in another before the Tenth Circuit Court of Appeals involving Albuquerque, New Mexico area facilities,[16] the Respondent consented to the imposition of broad orders in settlement of its repeated information request violations. [17] Finally, we have this same day issued a decision in *Postal Service*, 345 NLRB No. 26 (2005), imposing a broad cease-and-desist order against the Respondent at certain Albuquerque facilities where management not only committed Section 8(a)(5) information request violations but also violated Section 8(a)(1) and (3) by a series of adverse actions, including discharge, initiated against an employee craft director in retaliation for his rigorous union activity that began with the filing of an information request.[18] This connection between a union's information requests and other unfair labor practices by the Respondent at the Albuquerque facility provides further reason to anticipate from its past course of unlawful conduct that it is likely to violate employees' Section 7 rights "in any manner" in the future and should be enjoined from doing so.[19]

We disagree with our colleague's contention that the Respondent's self-help remedial efforts at the Waco facility have obviated the need for a broad order. We note the judge's skepticism that the alleged changes implemented by a new plant manager, which primarily involved a new procedure for logging information requests, manifested any genuine change in Respondent's attitude about responding to these requests. Obviously, the Respondent's voluntary measures failed to completely eliminate information request violations at the Waco facility involved here. Further, while we applaud any effort to prevent the recurrence of unlawful behavior, the Respondent's history of past failures to address endemic resistance to these requests in various localities strongly suggests that neither self-help measures nor another narrowly-drawn Board cease-and-desist order will suffice to remedy this situation.[20]

In sum, we find that the Respondent's proclivity to violate the Act demonstrates a general attitude of disregard for its Waco facility employees' Section 7 rights and poses such a future threat to any and all of those rights that a broad cease-and-desist order is the appropriate remedy.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as

except to the finding of the judge in the prior case that such information was presumptively relevant. We note that over a decade ago the Board mentioned the Respondent's propensity in Sec. 8(a)(5) information request cases to raise defenses that have been repeatedly rejected by the Board and courts in earlier cases. *Postal Service*, 310 NLRB 391, 392 (1993).

We agree with our dissenting colleague that a respondent's failure to file exceptions does not necessarily show that it had a weak case. However, where, as here, the respondent has unsuccessfully raised a defense in a prior case before the Board, and reasserted it in a later case, and predictably lost before the judge, the failure to file exceptions in that case does suggest a weak defense. Further, the reassertion of a weak defense in the second case, after losing the first one, is a factor showing a disregard of statutory constraints.

[12] See *Postal Service*, supra, 341 NLRB No. 100 (2004); *Postal Service*, supra, 341 NLRB No. 94 (2004); *Postal Service*, supra, 339 NLRB at 1162 fn. 1 (2003) and cases cited there; *Postal Service*, 339 NLRB 400 (2003); *Postal Service*, 338 NLRB 1052 (2003).

[13] *Postal Service*, 339 NLRB 1162 (2003). In *Postal Service*, 341 NLRB No. 100, slip op. at 1 fn. 4 (2004), the Board found no need for another broad order to remedy Sec. 8(a)(5) violations because of the court-enforced broad orders already applicable to the Houston facilities involved.

[14] *Postal Service*, 341 NLRB No. 94 (2004).

[15] *NLRB v. USPS*, Case No. 03-60908 (unpub. consent judgment entered Dec. 8, 2003), and *NLRB v. USPS*, Case No. 03-61059 (unpub. order granting enforcement of 339 NLRB 1162).

[16] *NLRB v. USPS*, Case No. 02-9587 (unpub. consent judgment entered Jan. 8, 2003).

[17] In both cases, the settlement stipulation did not contain a nonadmission clause.

[18] The Respondent did not except to the judge's findings of Sec. 8(a)(1) and (3) violations.

[19] Our dissenting colleague disputes the significance of unfair labor practices committed at other facilities based on his view that "the Postal Service is a massive, far-flung and decentralized operation and violations of this nature . . . are decidedly parochial." Accepting arguendo the dissent's characterization of the Respondent's operations, more than a decade of repeated violations in various areas and at various facilities indicate that, absent effective orders aimed at higher management, not only are information request violations likely to recur in those places but it is also reasonably foreseeable that, as in Albuquerque, other unfair labor practices will be committed by local officials who have demonstrated their disregard for the Act and prior Board orders. In light of the Respondent's history, we simply disagree with our colleague that the unfair labor practices at Albuquerque "portend nothing" about the likelihood of unfair labor practices elsewhere.

[20] See General Counsel Memorandum OM 01-25, announcing the General Counsel's withdrawal from participation in an unsuccessful nationwide alternative dispute resolution plan for dealing with refusal to provide information request issues.

modified below and orders that the Respondent, United States Postal Service, Waco, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

"(c) Within 14 days after service by the Region, post at its Production & Distribution Center facility located at 430 W. State Highway 6 in Waco, Texas, copies of the attached notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent, United States Postal Service, at its Production & Distribution Center facility located at 430 W. State Highway 6 in Waco, Texas, at any time since May 4, 2004."

2. Delete paragraphs 2(b) and 2(d) and reletter the subsequent subparagraphs.

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. August 27, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting in part:

I. INTRODUCTION

I join my colleagues in declining to order the reading of the notice to unit employees and in limiting the notice posting and conditional mailing provisions of the Order to the Waco, Texas postal facility where the violations occurred. I also agree that ordering the Respondent to reinstate grievances lost by its failure to provide requested relevant information to the Union is not an appropriate remedy in this case.[1]

Contrary to my colleagues, however, I find that Respondent's failure to adequately and/or timely respond to four of the 68 information requests submitted by the Charging Party over a two-month period does not warrant a broad order restraining the Respondent from committing "any" conceivable violation of the Act at its Waco facility. The Board's authority regarding unfair labor practices does not include "authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct." *NLRB v. Express Publishing Co.*, 312 U.S. 426, 433 (1941). Isolated unfair labor practices, such as those found here, do "not justify an injunction broadly to obey the statute and thus subject the [violator] to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that which was originally charged." Id. at 435-436. Though the Board, with court approval, has recognized a narrow exception to this general rule, the test is a stringent one: a broad order is warranted *only* when a respondent "is shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *Hickmott Foods Inc.*, 242 NLRB 1357 (1979). In my view, the failure to respond to several information requests in violation of a single subsection of Section 8(a) does not meet the stringent *Hickmott* standard.

II. LEGAL PRINCIPLES

The Board's decision in *Hickmott Foods*, upon which my colleagues rely, cannot be read apart from the Supreme Court's decision in *Express Publishing Co.*, to which it responded. In *Express Publishing Co.*, the Court admonished the Board for seeking to remedy a Section 8(a)(5) refusal to bargain violation with a broad order that the "respondent should in effect refrain from violating the Act in any manner whatsoever." 312 U.S. at 430. In finding the Board lacked the authority to impose an order of such breadth in that case, the Court pointed first to the "carefully chosen" and limiting language of Section 10(c), which permits the Board, after it finds a party has committed an unfair labor practice, to order the party

[21] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] Reinstatement of grievances may be an appropriate remedy, however, where the facts of a particular case demonstrate that a grievant actually was prejudiced by a respondent's failure to provide relevant information. The General Counsel made no such showing here.

"to cease and desist from ***such*** unfair labor practice." 312 U.S. at 433 (emphasis added).

The Court then described Section 8 of the Act as a "guide pointing to the appropriate limits" of the Board's cease-and-desist authority, stating: "By [Congress'] definition and classification of unfair labor practices in the statute it has shown that they are not always so similar or related that the commission of one necessarily merits or rightly admits of an order restraining all." 312 U.S. at 434. Noting that the respondent's conduct in refusing to bargain or execute an agreement was "wholly unrelated" to the domination of a union or interference with its formation in violation of Section 8(a)(2), or discrimination in regard to hire or tenure of employment in violation of Section 8(a)(3), the Court found no basis to suggest that the violation found by the Board "gave any indication that in the future respondent would engage in all or any of the numerous other unfair labor practices defined by the Act." Id. at 434.

Finally, the Court stressed that injunction orders of the Board are subject to the same standards applicable to Federal courts and "must, like the injunction order of a court, state with reasonable specificity the acts which the respondent is to do or refrain from doing." Id. at 433.[2]

Consistent with the foregoing principles, the Court concluded that "Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found." 312 U.S. at 434. Rather, "[t]o justify an order restraining *other violations* it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past." Id. at 437 (emphasis added).

In short, while the Court did not prohibit orders restraining *other violations,* it also did not endorse orders broadly restraining *any* violations of the Act, the standard language of a Board broad order.[3] Clearly, then, if such broad orders are to be entered at all they must be appropriately tailored to the unfair labor practices the order is intended to address and must be reserved for egregious cases in which the violations are so severe or so numerous and varied as to truly manifest a general disregard for employees' fundamental statutory rights.[4]

III. APPLICATION

Applying the *Hickmott* standard consistent with *Express Publishing Co.* principles, the circumstances of this case do not support a broad cease-and-desist order. The Respondent's four information request violations are neither numerous nor severe. Nor do these violations evidence the type of widespread and persistent pattern of attempts "by varying methods" to interfere with legislatively protected rights typically required to sustain a broad order.[5] My colleagues appear to acknowledge as

[2] See also *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (Federal court injunctions must be specifically worded in order "to prevent uncertainty and confusion" and "to avoid the possible finding of a contempt citation on a decree too vague to be understood"). The specificity requirements for injunctions are codified in Fed. R Civ. P. 65(d), which provides:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Circuit courts have relied on this Federal rule to modify or deny enforcement of Board orders that were overly broad or vague. For example, in *NLRB v. Teamsters Local No. 85*, 458 F.2d 222, 226 (9th Cir. 1972), *NLRB v. Teamsters Local No. 327*, 419 F.2d 1282, 1284 (6th Cir. 1970) and *NLRB v. Teamsters Local No. 327*, 432 F.2d 933, 935 (6th Cir. 1970), the courts narrowed and declined to enforce broad orders issued against unions, which sought to enjoin possible future violations committed against "all other employers" and "in any manner" because they lacked the specificity required by Rule 65(d).

[3] In noting that the Court did not *endorse* in *Express Publishing Co.* orders restraining "any" violations of the Act, I am not contending that the Board lacks the authority to issue broad orders under any circumstances. I recognize that a number of circuit courts have enforced broad Board orders. I am, however, arguing that the issuance of such an order on the facts of this case contravenes the principles clearly articulated in *Express Publishing Co.*

[4] My colleagues cite two post-*Express Publishing* Supreme Court decisions to support their position that a broad order is appropriate in the instant case. The first case, *May Department Stores Co. v. NLRB*, 326 U.S. 376 (1945), is actually consistent with my view that a broad order rarely would be warranted in the absence of violations of various sections of the Act. Though the Court stated in *May Department Stores* that the Board possesses the authority to issue broad remedial orders to accomplish the purposes of the Act, the Court ultimately modified the Board's broad order "so that the injunction will not apply generally to all violations under the Act" because the violations found were not sufficiently "intertwined with" violations of other sections of the Act to demonstrate that the respondent had "an attitude of opposition to the purposes of the Act." Id., 326 U.S. at 392. In *NLRB v. Cheney California Lumber Co.*, 327 U.S. 385 (1946), the second case cited by my colleagues, the respondent failed to file exceptions to the trial examiner's recommended broad order. Thus, the propriety of the Board's use of a broad order was not before the Court. Rather, the sole issue presented was whether the circuit court of appeals had the authority to modify the Board's remedy where the respondent failed to object to it before the Board. Concededly, in dicta, the Supreme Court commented that the evidence presented in *Cheney* "disclosed a course of conduct against which [a broad] order may be the only proper remedy." Id., 327 U.S. at 555. However, no such record exists here.

[5] See, e.g. *NLRB v. Union Nacional de Trabajadores*, 540 F.2d 1, 11 (1st Cir. 1976) (enforcing broad order where numerous violent assaults and threats in violations of Secs. 8(b)(1)(A), 8(b)(4)(i) and (ii)(b) dem-

much, as they seek to justify a broad order solely under the "proclivity" prong of the *Hickmott* test.

In my view, however, *Express Publishing Co.* requires more than a mere inclination or propensity to engage in particular conduct inconsistent with the Act in order to justify a broad order; it must be conduct that demonstrates a general disregard for fundamental statutory rights and raises the threat of continuing and varying efforts to frustrate those rights in the future.[6] Recidivism alone, as my colleagues concede, is an insufficient basis for imposing a broad order under *Hickmott*.

In the instant case, the only unlawful conduct that occurred at the Respondent's Waco facility is the Respondent's failure to timely or adequately respond to a small percentage of the numerous information requests routinely generated by the Charging Party in the course of investigating and pursuing grievances. Such conduct, while unlawful, simply does not suggest a proclivity to violate *other* sections of the Act either in Waco or elsewhere. Nor does it manifest a general disregard for employees' fundamental statutory rights. The incidents of violations in 2001 and 2003 may demonstrate a persistent problem, but it is a narrow one.

Consistent with the plain language of Section 10(c), the Board must tailor its remedies to the unfair labor practices found. *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 900 (1984); *Express Publishing Co.*, supra. Thus, an order tailored to the Respondent's history of failing to respond to information requests at its Waco facility and prohibiting the Respondent from violating the Act "in any like or related manner" in the future (i.e., enjoining the Respondent from committing any like or related Section 8(a)(5) violations) is the appropriate remedy under *Express Publishing Co.* as implemented by the Board in *Hickmott Foods*. See 312 U.S. at 438 ("An appropriate order under the circumstances of the present case would go no further that to restrain the respondent from any refusal to bargain and from any other acts in any manner interfering with the Guild's efforts to negotiate.").

My colleagues cite several factors, none of which is persuasive, in support of their decision to issue a broad order. First, they note that information request violations occurred at this same facility in 2001, and that the violations in this case (in 2003) occurred after the Board issued an uncontested narrow order in its earlier decision but before the Fifth Circuit Court of Appeals enforced the Board's prior order. That may be, but the logical response to repeated violations of a specific proscription of a Board order is to institute contempt proceedings to enforce that order, not to issue an even broader order seeking to restrain the commission of other unlawful acts wholly disassociated from those the Respondent has committed. If the objective is to compel compliance through the threat of contempt proceedings, then the Board should make good on the threat.[7]

My colleagues also contend that because the information requests at issue pertain to grievance investigations, the Respondent's refusals to provide such information have the potential to hide other misconduct, including other statutory violations. However, the same could be said of virtually any information request (or subpoena for that matter), and this speculative "potential"[8] can be effectively redressed by requiring the production of the relevant information pursuant to contempt proceedings instituted under a narrow order.[9]

onstrated "persistent attempts to interfere with legislatively protected rights by varying methods"); *Federated Logistics and Operations v. NLRB*, 400 F.3d 920, 929 (D.C. Cir. 2005) (multiple violations of 8(a)(1) and (3) including threats, promises of benefits, withheld wage increases, discriminatory disciplinary actions, the maintenance of an overly broad no-solicitation rule, interrogations, creating the impression of surveillance, deemed to be sufficiently persistent and widespread to warrant a broad cease and desist order).

[6] I do not maintain that the Board lacks the authority to issue a broad order under appropriate circumstances where the misconduct violates only one subsection of the Act. Numerous instances of unlawful terminations and blatantly discriminatory discipline of employees in violation of Sec. 8(a)(3), for example, might suffice to demonstrate a general disregard for fundamental statutory rights and raise a reasonable threat of continuing and varying efforts to frustrate those rights in the future. This is plainly not such a case. Nor are such cases likely to be common, since offenders who harbor such a general disregard for fundamental rights rarely confine themselves to discrete violations. See, e.g., fn. 4, supra, and cases cited therein. Indeed, my colleagues cite only two cases in which broad orders were entered based upon violations of a single subsection of the Act. The first was a panel decision in which two members entered a broad order over the dissent of then-Member Acosta. *Postal Service*, 339 NLRB 1162 (2003). In the second case the 'broad" order at issue was actually quite specific and targeted at the same conduct the respondent union previously repeatedly committed. *Iron Workers Local 433 (United Steel)*, 293 NLRB 621 (1989), enfd. 920 F.2d 28 (9th Cir. 1989) (restraining the defendant union from "in any manner inducing and encouraging employees . . . to refuse to perform any services where an object thereof is to force or require [an employer] to cease doing business with [others}" and "in any manner threatening, coercing or restraining [persons] . . . where an object thereof is to force or require [persons] to cease doing business with one another").

[7] My colleagues contend that this proposition has no import here because contempt proceedings were not available in the circumstances of this case. The majority, however, misses the larger point: the appropriate response to repeated violations of the Board's narrow orders is to pursue contempt orders when available, not to issue a broad order based solely on those repeated violations.

[8] My colleagues do not dispute that there is no actual evidence of other violations.

[9] I note that my colleagues' entire argument on this point rests on a single "cf." cite to a 1945 appellate court decision under the Wartime

My colleagues also rely on the "weakness" of the Respondent's defenses to the information request violations found at Waco. However, in the case relating to the 2001 violations, the Respondent simply did not except to the judge's decision, electing instead to produce the requested information—hardly an unusual outcome in an information request case where the costs of litigating frequently outweigh the benefits of resisting disclosure. Thus, I would not infer from the fact that Respondent reasserted similar defenses in a different case to which it did file exceptions, that the defenses were necessarily weak. More significantly, the assertion of weak defenses in Board litigation is a decidedly common phenomenon, and bears no logical or statistical relation to a respondent's propensity to engage in violations of any section of the Act.

My colleagues also place much emphasis on the fact that the Board has issued, or the Respondent has consented to, broad cease-and-desist orders for information request violations at Postal Service facilities in other cities and states. However, the Postal Service is a massive, far-flung and decentralized operation and violations of this nature—which involve disputes over what evidence may or may not be relevant to a particular grievance, or over how promptly or fully an information request is responded to by a recipient—are decidedly parochial.[10] Indeed, that is why my colleagues are limiting the remedy to the Waco facility at issue here. Consequently, evidence of violations at other facilities adds little to the analysis of whether a broad order is appropriate in Waco.

Finally, my colleagues rely on the fact that they are issuing today another broad order against a Postal Service facility located some 800 miles from Waco in Albuquerque, New Mexico. In that case, adverse action was taken against an employee craft director (i.e., shop steward), principally by a single on-site supervisor, for the craft director's rigorous union activities, which included filing multiple grievances and information requests. Whatever the unlawful conduct in Albuquerque may imply about the likelihood of additional and varied unfair labor practices at that facility, it portends nothing about the local management in Waco and the likelihood of other unfair labor practices occurring there.

In fact, the Respondent's managers in Waco undertook voluntary remedial measures even before the Fifth Circuit enforced the Board's earlier order directed at the facility. Respondent named a new Plant Manager who took prompt action to assure compliance with union information requests. At her direction, the Respondent's in-house attorneys trained management officials on the importance of responding to information requests. Second, the facility's new manager implemented a system to log and track the Union's information requests.

The majority contends that the Respondent's voluntary remedial measures do not obviate the need for a broad order because those efforts failed to completely eliminate information request violations. I disagree. Initiatives to ensure compliance with the Act and to educate managers as to the rights it protects, even if imperfect in result, are plainly inconsistent with "an attitude of opposition to the purposes of the Act." *Hickmott*, supra, 242 NLRB at 1357. The Respondent indisputably improved its responsiveness to the Union's information requests. Its new system for tracking information requests allowed it to successfully respond to 64 other requests by the Union over an eight week period, and presumably many others.

Such voluntary remedial action also does not square with the majority's conclusion that the Respondent's overall course of conduct indicates that, in the future and at this postal facility, it is likely to engage in other unfair labor practices not similar or fairly related to the Section 8(a)(5) information request violations found. The Respondent's voluntary remedial measures suggest just the opposite, and further demonstrate that the Board's traditional remedies are an adequate restraint on the Respondent's unfair labor practices.

In short, nothing in the Respondent's behavior at the Waco postal facility demonstrates either a danger that the Respondent will commit other dissimilar violations of the Act in the future at that facility, *Express Publishing Co.*, supra, 312 U.S. at 437, or a propensity to violate employee rights under the Act by "varying methods." *Union Nacional de Trabajadores*, supra, 540 F.2d at 11. Consequently, I respectfully disagree with my colleagues' decision to impose a broad order and would, consistent with Section 10(c) and Supreme Court precedent, instead issue a cease-and-desist order for "such" violations found.

Dated, Washington, D.C. August 27, 2005

Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

Emergency Price Control Act, an entirely different statutory framework.

[10] The General Counsel Memorandum cited by my colleagues, OM 01-25, in which the Agency withdrew from a short-lived nationwide alternative dispute resolution plan instituted to attempt to address the numerous information request disputes between the Postal Service and its unions, confirms the parochial nature of the problem, stating: "Moreover many of these disputes arise from a relatively limited number of facilities." Id. at page 1 of General Counsel Leonard R. Page's accompanying letter to the Postal Service.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union, Local 739, AFL–CIO, by failing and refusing to furnish the Union with a copy of the overtime desired list and the order of rotation that management used to make up the overtime to Beverly Alexander.

WE WILL NOT refuse to bargain collectively with the Union by failing to timely furnish the Union with a copy of the OMSS report.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish the Union with a copy of the mail conditions report and how much mail was cancelled on May 5 and 6, 2003.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish the Union with the following information: (1) how long the six level 6 FSM jobs have existed, (2) a list of all the employees that work on the flat sorter as level 6 clerks and how long they have worked there, (3) what other jobs will management want to abolish, and (4) when will they abolish these jobs.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union all of the information we unlawfully withheld.

UNITED STATES POSTAL SERVICE

Laurie Hines-Ackerman, Esq. for the General Counsel.
Kimberly C. Blanton, Esq. and Alexander G. Katz, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge: The charge was filed by the American Postal Workers Union, Local 739, AFL-CIO (Union or Charging Party) against the United States Postal Service (Respondent or USPS) on July 14, 2003.[1] An amended charge was filed on September 25. A first amended complaint (hereafter referred to as complaint) was issued on May 12, 2004 alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (Act), by failing to timely furnish the Charging Party with the described information requested by it, which information is necessary for and relevant to the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the involved unit. The Respondent denies violating the Act. By way of an affirmative defense, Respondent argues that the National Labor Relations Board (Board) lacks jurisdiction to rule upon questions relating solely to the matter of contract interpretation, which do not involve the repudiation of the contract.

A trial was held in this matter on May 27, 2004. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for General Counsel and the Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the Respondent admits, and I find that the Respondent provides postal services for the United Sates and operates various facilities throughout the United States in the performance of that function, including its processing and distribution center (PD&C) located in Waco, Texas, the only facility involved in this proceeding. The Respondent admits and I find that the Board has jurisdiction over the Respondent by virtue of Section 1209 of the Postal Reorganization Act (PRA). The complaint alleges, the Respondent admits, and I find that the Union and the National Union, namely the American Postal Workers Union, AFL-CIO (National), are labor organizations within the meaning of Sections 2(5) of the Act.

The complaint alleges, the Respondent admits and I find that the following employees of the Respondent, herein called the unit, constitute a unit appropriate for the proposes of collective bargaining within the meaning of Section 9(b) of the Act:

> INCLUDED: All maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, and mail equipment shops employees and material distribution centers employees.
>
> EXCLUDED: Managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards [as defined in Public Law 91-375, 1202(2)], all postal inspection service employees, employees in the supplemental workforce as defined in Article 7 (of the parties' collective bargaining agreement), rural letter carriers, mail handlers or letter carriers.

[1] All dates are in 2003 unless otherwise indicated.

The complaint alleges, the Respondent admits and I find that the National Union has been the designated exclusive bargaining representative of the unit, it has been recognized as the representative by the Respondent, this recognition has been embodied in successive bargaining agreements, and the Charging Party has been an agent for the National Union for various purposes including administering the collective bargaining agreement with respect to employees in the Unit who are employed by the Respondent in Waco.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On September 6, 2002 Judge Cullen, after presiding at a trial before the National Labor Relations Board (Board) on June 24, 2002, issued a decision in Case No. 16-CA-21403 et al in which he found that USPS, at its Waco facility, violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish and/or timely furnish the Union with requested information which was presumptively relevant, namely Organization Management Staffing System (OMSS) Reports, the limitation of a job posting, Clock Rings, the weekly schedules for Customer Service employees in Waco, Time Records, and a List of Unencumbered employees. USPS was also found in violation of Section 8(a)(1) and (5) of the Act by failing and refusing to timely furnish the Union with the requested Mail Condition Reports, Form 50s for all casual employees employed at USPS's Waco P&DC, and disciplinary records. General Counsel's Exhibit 2.

On October 25, 2002 the Board issued an Order which indicated that no statement of exceptions to Judge Cullen's decision in Case No. 16-CA-21403 et al had been filed with the Board, and the Board adopted the findings and conclusions of Judge Cullen. General Counsel's Exhibit 2.

On June 3 the United States Court of Appeals for the Fifth Circuit in 03-60151 issued a judgment enforcing the Board's order in Case No. 16-CA-21403 et al and ordered USPS to abide by such order. General Counsel's Exhibit 2

William Curtis Reed, who has been the Union President for three years, testified that there is a grievance arbitration procedure in the collective bargaining agreement between the Union and USPS; that he files grievances; that step one of the procedure involves notifying USPS and trying to resolve the issue with the employee's immediate supervisor; that if step one is denied, then it is appealed to step two; that as part of step two, an information request is submitted to USPS; that the installation head or someone designated by it represents USPS at the step two meeting; that if step two is denied, the Union has 10 days to appeal it to local management; that at step three the entire case is submitted, namely all of the evidence, all of the arguments, management's rebuttals, and all of the information requests; that at step three the grievance is no longer in his hands, the Union is represented by the National Business Agency and USPS is represented by someone out of the regional office; that the last possible moment that he can add evidence is 10 days after the step two answer is given to him; and that General Counsel's Exhibit 3 is, as here pertinent, Article 31, Section 3 from the involved collective bargaining agreement which reads as follows:

> The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.
>
> Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee. All other requests for information shall be directed by the National President of the Union to the Vice-President, Labor Relations.

Reed further testified that if he needs information, he fills out an information request form, General Counsel's Exhibit 4,[2] he puts it in a "Holy Joe," which is an inter-office envelope, and places it in a U-cart, which is a bin used for transporting mail, marked Official Mail; that this cart is only used for mail which stays in the building; that from May to June 2003 he sent the information requests to Mary Trout, who at the time was the Attendance Control Supervisor because in 2002, after Judge Cullen's above-described decision, USPS sent a letter to the Union indicating that all information requests should go to Trout; and that typically when management receives a request for information from the Union, management will either call him to come to their office or they will give him the information by sliding it under the door of the union office which is located just off the workroom floor, or they will give it to him while he is on the floor.

B. Facts

In March 2003 Iris Reddick became the Plant Manager of the Waco processing and distribution facility. She testified that when she was promoted to Plant Manager at Waco Union requests for information were not answered. On cross-examination Reddick testified that she replaced Robert Roper; that Sandra Sweatt, who was at the Waco facility at the time and worked in customer service, did not work for her; and that in her first week as Plant Manager at Waco she went with Sweatt to post the Board notice at each facility and Sweatt explained the process to her.

Nancy Robinette, who at the time of the involved information requests was the acting secretary to the plant manager at the Waco processing and distribution facility, testified that in late April 2003 she started maintaining a log in which she wrote the date the request for information was received, the name of the requestor, who the request for information was going to, the issue, and the date the information was given back to her to send out to the Union; that Respondent's Exhibit 1 is the handwritten request for information log she kept from "5/5/03" to

[2] The printed form has boxes for certain information, namely the name of the grievant, the nature of the allegation, the date of the request, to whom it is directed, who is requesting the information, a description of the information, whether the request is approved or denied, with a reason, the date of the disposition of the request, and the signature of the person who ruled on the request.

"7/6/03"; and that Respondent's Exhibit 1 also specifies the date the representative of the Union received the information, and this entry is based on a form which the Union representative signed when he received the information. On cross-examination Robinette testified that Henry Smith assigned her to log in the information requests and Reddick played a role in her continuation of that task. On redirect Robinette testified that Smith told her to keep a record of everything regarding information requests in February or March 2003. Subsequently Robinette testified that she was directed by Reddick to set up the log which was received as Respondent's Exhibit 1, and before that she just used a legal pad; that while a procedure was set up by Reddick for logging in requests for information, the procedure was not followed 100 percent of the time; that while Mary Trout, who is the supervisor of distribution operations and was the designated contact person for the Union's information requests, was aware of the procedure, sometimes Trout (one percent of the time) did not give her a request to log in.

Trout testified that normally the plant manager's secretary would distribute the Union's information requests to her; that Respondent's Exhibit 2 is a Union request for information log that she maintained; that Respondent's Exhibit 2 starts on April 21 and runs to July 7; that she left this office sometime in June 2003 and the entries on Respondent's Exhibit 2 after that time were made by her replacement, someone she identified only as Frankie; that when she received an information request she did not log it in until she "gave it over to the person that was receiving it, the end of it. Usually it was Nancy Robinette" (transcript page 105); that she started her log because there was a lot of controversy about information not being given, or some people not seeing it; and that the plant manager made it a big priority to make sure that the information got out no later than a week. On cross-examination Trout testified that Plant Manager Reddick was out a lot and the different acting plant managers were not as adamant as Reddick about the information requests; that Lewis Zedlitz performed acting plant manager functions in May and June and possibly July 2003; and that in June 2003 Zedlitz was the one who sent her out of her office.

General Counsel's Exhibit 5 is an undated information request form, regarding Grievant Beverly Alexander, from Reed to Trout seeking the following:

> The Union is requesting a copy of Beverly Alexander['s] clock rings for the following time period[:] September through October 2002, for each …[S]uday night only. The Union also want[s] a copy of the overtime desire list for the time frame in question. The Union also want[s] to know the order of rotation that management used during this particular time, to make up the over time to Mrs. Alexander.

Reed testified that he left the date out on the information request by mistake; and that he delivered this request to Trout by placing it in an inter-office envelope and placing it in the U-cart marked Official Mail Only. General Counsel's Exhibit 6 is the same request only with a date on it, "5-04-03," and "2nd Request" handwritten by Reed in the Nature of the Allegation box. Reed testified that he made the second request because he did not receive the information after the first request; that he did not recall how much time passed between the first request and the second request; that he submitted the second request to Trout by placing it in an inter-office envelope and placing the envelope in the U-cart marked Official Mail Only; that he requested the "overtime desire list" because it would show him who was on the list and he wanted to see if Alexander's name was on the list to show whether she was entitled to overtime without filing for it; that the issue regarding the overtime for Alexander was that she was skipped on the overtime desired list in a previous grievance, and this grievance dealt with her makup; that the list would have shown him what days Alexander was supposed to have been given the make up overtime; that the "order of rotation" would have shown him whether management issued, pursuant the collective bargaining agreement, overtime on a seniority basis; that he never received the overtime desired list and the order of rotation from the Respondent; and that he filed a grievance and at the time of the trial herein it had been sent to step three, pending arbitration.

Reddick testified that she did not have any involvement with the information request received as General Counsel's Exhibit 6.

Robinette testified that she logged in the information request which was received as General Counsel's Exhibit 6 on page one of Respondent's Exhibit 1; and that she gave the Union the clock rings for Alexander. On cross-examination Robinette testified that the Respondent did not provide the requested overtime desired list or the order of rotation that management used from September to October 2002.

Trout testified that she was familiar with the information request received as General Counsel's Exhibit 6; that she had access to the clock rings using a program on the computer which supervisors can access; that for the overtime desired list she had to go to the floor, and it is basically put in the order of seniority; that with respect to the order of rotation, sometimes the supervisors mark the list and sometimes they do not; that the information request received as General Counsel's Exhibit 6 is the first entry on page two of her log; that the only information provided was 18 pages of clock rings; and that she would have given the overtime desired list. On cross-examination Trout testified that she told the Union that the supervisors did not always mark the overtime desired list to show the last person they kept for overtime so this information did not exist; that General Counsel's Exhibit 15 are the clock rings for Alexander; and that since her log indicates that she provided 18 pages to the Union, what is in the packet received as General Counsel's Exhibit 15 is what she provided to the Union.[3]

By information request dated "5-12-03," General Counsel's Exhibit 7, Reed submitted the following request to Trout:

> The Union is requesting a copy of the OMSS REPORT, the union has attached a copy of page 20 section 160 from the ELM [Employee Labor Relations Manual] to help show management what type of reports we are asking for from them.

Reed testified that he put this request in an inter-office envelope and placed the envelope in a U-cart marked Official Mail Only; that the OMSS report shows what positions are authorized for a facility; that in 2001 the Respondent did not give him this informa-

[3] The packet does not contain an overtime desire list.

tion when he requested it; and that at that time the Union filed a charge and there was another hearing on this same information request because the Respondent did not believe that the Union was entitled to this information.

On about May 12, according to the testimony of Reed, he had a conversation with Reddick in her office. Reed testified that Tim Loftin, who was the maintenance manager at the time, was also present; that the conversation lasted 15 to 20 minutes; that Reddick stated that she did not even know what an OMSS report was, and she tried, unsuccessfully, to get a copy of it from Ken Thompson, who works in the district office in Austin, Texas; that he needed the OMSS report for that whole year to see who held what positions because management had abolished a bargaining unit job and then a manager did the work; that if management gave the job a new title, the OMSS would have demonstrated whether the title was authorized for the Waco facility and it would have shown that the employee had held that position for the entire year; that USPS did not respond to his May 12 information request; that a grievance was filed by the Union on the issue of management performing bargaining unit work; and that at the time of the trial herein, the grievance was pending arbitration.

Reddick testified that she received the information request which is dated May 12 and which was received as General Counsel's Exhibit 7; that when she received the request she called the Labor Relations Manager for advice on how to answer the request; that she spoke with someone she identified only as Ann, who is an area person who works on staffing; that she spoke with Angie Barns who is the Human Resource Manager for the district; that she spoke with Jeff Claye, who is the Human Relations Manager for the Rio Grande District; and that she spoke with Sondra Sweatt, who is the person in the Waco plant who usually helps gather the data. On cross-examination Reddick testified that when Sweatt could not supply the information, she went to Claye; and that she did not tell Trout to tell the Union that the she had been speaking with Claye who was going to get back with the information.

On redirect Reddick testified that this was the first information request for an OMSS report that she received in her management career; and that the report originated from the Southwest Area Office in Dallas, Texas. On recross, Reddick testified that when Trout asked her about Reed's May 12 request for the OMSS report she immediately telephoned Labor Relations to find out how to provide the information. Subsequently Reddick testified that if Trout waits for weeks before telling her that she had been trying unsuccessfully to get the information, Reddick would not know about the request; that when Trout brought the request to her attention she immediately acted on it; and that she did not know the exact dates involved.

Robinette testified that the information request received as General Counsel's Exhibit 7 is not included on her log, Respondent's Exhibit 1. Subsequently Robinette testified that while this request was not on her log, she recalled seeing it and she believed that she saw it in Trout's office; that she told Trout that she did not have this request logged in and Trout told her that this report does not exist; that she told Trout that Claye had to be contacted and she sent Claye an email; and that Claye responded indicating that the information should be given to the Union.

Trout testified that she processed the information request received as General Counsel's Exhibit 7; that she had no idea what an OMSS report was; and that she took the request to plant manager Reddick, and after that she did not have any further involvement with the request.

By information request dated "5-12-03," General Counsel's Exhibit 8, Reed submitted the following request to Trout:

> The Union is requesting a copy of the mail conditions report for the following two days, May 5, 2003 and May 6. The Union also want[s] to know how much of the mail was cancelled for both days as well. The union also want[s] a copy of the overtime desire list for the days in question as well. The union also want[s] a copy of each employee's clock rings that is on the overtime desire list. All this information pertains to tour 3 mail office (clerks on the overtime desire list and clock rings)

Reed testified that he put this request in an inter-office envelope and placed the envelope in a U-cart marked Official Mail Only. Reed made a second request for this information on May 27, General Counsel's Exhibit 9. He testified that he put this second request in an inter-office envelope and placed the envelope in a U-cart marked Official Mail Only; that the mail condition report would have shown how much mail was processed in the plant on those two particular days; that management had denied Tour 3 clerks Tour 3 overtime and he wanted to be able to demonstrate that there was enough mail to show that overtime was needed; that he wanted the amount of mail cancelled on May 5 and 6 to show how late they were processing or canceling mail to further articulate his argument that there was a need for overtime; that mail is cancelled when it runs through a machine and the stamps are cancelled (lines are placed over the stamp) so that they cannot be used again; that a grievance was filed on the issue of Tour 3 overtime; that at the time of the trial herein it was at step three pending arbitration; and that he never received the mail conditions report or the amount of cancelled mail while he was processing this grievance.

Reddick testified that she recognized the information request received as General Counsel's Exhibit 8; that her involvement with this request consisted of supplying the information through the supervisor and through her office to the Union; that around this time she set up a system under which the request for information would be logged in to centralize the procedure and to ensure that the Union received the information; and that the Union signed off as well as someone from Respondent.

Robinette testified that the information request received as General Counsel's Exhibit 8 is not included on her log, Respondent's Exhibit 1.

Trout testified that she processed the Union's information request received as General Counsel's Exhibit 8; that she got the mail condition reports; that she went to the floor to get the overtime desired list; that, after asking the Union the scope of its request, she provided the clock rings for the people on the overtime desired list; that this request is the last entry on page two of her log; that she gave this information to Reed; and that Reed told her that this was a second request for this information

so she crossed out the information request date of "5/27/03" and wrote over it "5/12/03." On cross-examination Trout testified that unlike her other entries, she did not write down how many pages of information were provided to the Union; that the daily mail condition reports, which tell how much mail was cancelled for that day, were "like one page each" (transcript page 122); and that General Counsel's Exhibit 16 is a copy of the Tour 3 overtime desired list of April through June 2003, along with clock rings for Tour 3 and Tour 1 employees; that the first page of General Counsel's Exhibit 16 has two date stamps on it and that normally the plant manager's secretary, Jackie Munmon, places these stamps on an information request[4]; that General Counsel's Exhibit 16 does not have a form like that included in the packet received as General Counsel's Exhibit 15 showing the signature of the Union representative receiving the information requested on May 12 and 27; and that her handwritten last entry on page two of her log is the only proof that the information requested on May 12 and 27 was provided to the Union.

By information request dated "6-1-03," General Counsel's Exhibit 10, Reed submitted the following request to Trout:

> The Union wants to know in writing why management is abolishing 6 level 6 jobs (FSM [Flat Sorter] Clerks). The Union also want[s] to know how long … [have] the 6 level 6 jobs been around (how long has management been using scheme clerks on the flat sorter), the union also want[s] a list of all the employees that work on the flat sorter, as level 6 clerks to include years. The Union also want[s] to know what other jobs will management want to abolish and when will they want to abolish these jobs.

Reed testified that he put this request in an inter-office envelope and placed the envelope in a U-cart marked Official Mail Only; that since the Respondent was not returning his information requests to show that it had received them, he placed a mail date stamp (June 1) on the request form; that he was requesting this information because management had abolished six FSM clerks jobs and he wanted to make sure that USPS was contractually right in taking this action; that he asked about the other jobs that management would abolish and when because management has told him that they were going to abolish jobs and he wanted to tell employees so that they could bid on other jobs; that he asked for a list of the employees who worked on the flat sorter as level 6 clerks because he wanted to show that there was a need for the job and how long the particular employees had been working in that particular job; that Lewis Zedlitz sent him a letter stating why the jobs were being abolished; that he filed a grievance on the issue of the abolishment of FSM jobs; that he did not have the information when he filed the grievance; and that the grievance is at step 3 pending arbitration. On redirect Reed testified that he had previously asked the Respondent why they were abolishing the level 6 jobs.

Reddick testified that she recognized the request for information which was dated June 1 and received as General Counsel's Exhibit 10; that she never processes any of the information requests but rather she would follow up with the supervisors and help them get the information; and that Trout's name was on the request and she was the person that Respondent was centralizing the information requests to at that point.

Robinette testified that the information request received as General Counsel's Exhibit 10 is the third entry on page two of Respondent's Exhibit 1; and that in response to this request, she gave a one page letter from Zedlitz to Reed who signed for it on "6/10/03." On cross-examination Robinette testified that her log does not reflect an index of what was actually provided to the Union but rather it reflects her understanding of what was provided to the Union; and that "from my summary, I know that one page is not everything that they ask[ed] for." (transcript page 96)

Trout testified that she did not recognize the Union's information request received as General Counsel's Exhibit 10, and she would not have been able to process the request.

By information request dated "6-13-03," General Counsel's Exhibit 11, John Baker, who is the Vice President of the Union and works at the Waco annex facility, submitted the following request to Trout:

> request the management organization report for the previous 12 month period for the Waco facility. [R]equest the management staffing report for the previous 12 month period for the [W]aco facility. [R]equest the management staffing exception report for the previous 12 month period for the [W]aco [T]exas facility.

Baker testified that he files information requests to investigate and adjust grievances; that he believed that the OMSS report encapsulates all three of the reports that he requested; that he asked for the reports because he was investigating a possible grievance with respect to whether the Respondent was utilizing temporary employees in bargaining unit positions; that the reports would show how many non-bargaining unit positions were authorized and what the actual compliment was at the time; that he asked for 12 months to be able to note any change within that time frame; and that he received a June 18 response from USPS, General Counsel's Exhibit 12, in which Trout denied the request indicating that "[t]he Union has not identified how the information requested is relative to the APWU [American Postal Workers Union] bargaining units nor how it is arguably relevant to any alleged violations of the Collective Bargaining Agreement." Trout went on to indicate "[I]f the Union would respond and explain the arguable relevancy, the request will be reconsidered."

Robinette testified that the information request received as General Counsel's Exhibit 11 is included on page two of her log; that the Union was given five pages which Baker signed for on June 26, 2003; that when she writes in the column headed "NATURE OF ALLEGATION, ARTICLE" it is a summary of what she understands the Union is requesting; that she was aware that USPS was given a subpoena to produce documents showing that the Union received the requested documents; and that she spent a lot of time unsuccessfully looking for the box of documents which showed the Union received requested documents.

[4] The date stamps are May 13 and 15. This is the information request received as General Counsel's Exhibit 8, dated May 12.

On July 1 Baker filed a charge with the Board in Case 16-CA-22906 alleging that the Respondent violated Section 8(a)(1) and (5) of the Act when Trout denied the Union's June 13 information request relevant to the investigation and filing of grievances on behalf of the local bargaining unit.

Baker testified that in August 2003 USPS gave him the reports described in his information request of June 13; that manager Zedlitz told him that Reed was pursuing the staffing issue; and that there was no need for him and Reed to file on the same issue so he withdrew his charge.

By letter dated August 7, General Counsel's Exhibit 14, Reddick advised Baker as follows:

> Attached is the information you requested on June 13, 2003. The information is being provided despite your failure to articulate the relevance thereof to any aspect of your bargaining unit or the collective bargaining agreement between the parties.
>
> For future reference, if the employer questions the relevancy of the information your are requesting and no response is forth coming, the employer will consider the request to have been withdrawn or otherwise made moot.

Reed testified that on May 21, 2004 he had a conversation with Loftin who told him that he had the information request and he was going to give him the information; that Loftin asked him what particular information he needed; that he told Loftin that he did not need any information anymore because the grievance had been processed and he could not submit any more information; that Loftin asked him how far he wanted to go back on the FSM job and he told Loftin that he should go back as far as when Reed started working at the Waco facility; that he did not get the information at that time; and that Chuck Mason, who is a maintenance supervisor, was present during this conversation.

C. Analysis

Collectively paragraphs 10(a), 11 and 12(a) of the complaint allege that on or about May 4, the Charging Party, in writing, requested, for the time period of September through October 2002 a copy of the overtime desired list and the order of rotation that management used to make up the overtime to Beverly Alexander; that the information is necessary for and relevant to the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the unit; and that since about May 4 the Respondent has failed and refused to furnish the Charging Party with this information. In its amended answer to the complaint the Respondent admits that on or about May 4, the Charging Party, in writing, requested, for the time period of September through October 2002 a copy of the overtime desired list and the order of rotation that management used to make up the overtime to Beverly Alexander.

General Counsel points out on brief that the Supreme Court ruled (a) in NLRB v. Truitt Mfg. Co., 351 U.S. 432 (1956) that a union, as exclusive bargaining representative of the bargaining unit employees, is entitled to receive relevant information from an employer, and (b) in Acme Industrial Co., 385 U.S. 432 (1967) that an employer has a statutory duty to supply information which is potentially relevant and of use to the union in fulfilling its duties as exclusive representative, including its duty to police the contract, and a union is entitled to receive information from an employer that could be used to process and investigate grievances. General Counsel also points out that the Board applies a liberal standard of discovery, Postal Service, 307 NLRB 429, 432 (1992), information concerning bargaining unit employees is presumptively relevant and must be furnished upon request, Evergreen New Hope Health and Rehabilitation Center, 337 NLRB No. 71 slip op. at 2 (May 8, 2002), and the failure to timely provide relevant information is also a violation of Section 8(a)(5) and (1) of the Act, Postal Service, 308 NLRB 547 (1992). General Counsel contends that at issue here is how the Respondent responded to the Union's information requests, the system the Respondent had in place, the reliability of the documentation, and the completeness of the apparent responses; that while the Respondent tried to improve its information tracking system, its efforts failed in that it did not centralize its request tracking system and its plan to respond to the information requests, and the Respondent's involved documentation is incomplete; that Respondent's documentation does not show that the overtime desired list was provided to the Union in that Respondent's documentation shows only that clock rings were provided to the Union; that Robinette's and Trout's logs contain no indication that the overtime desired list and order of rotation management used for the requested time period leads to the conclusion that the Respondent did not provide the requested information; and that with respect to the order of rotation, the Respondent is obligated to provide the information it has available, to compile it, or to give the Union access to the records from which it can reasonably compile the information.

The Respondent on brief argues that it provided and responded to all the information requested on May 4; that if the Union did not receive the information requested, they should have renewed their request or complained about it being deficient, and the Union did neither; that since management made a good faith attempt to provide the Union with information and management was not notified of any inadequacies, it cannot be expected to remedy something it has no knowledge of; that until the Union filed the charge management thought the request had been fulfilled; that Trout's verbal response to the written request for the order of rotation, indicating that it did not exist, was perfectly lawful; and that the order of rotation could not be recreated.

In my opinion, the Respondent violated the Act as alleged in paragraph 10(a) to the extent that it did not, as Robinette concedes, provide the requested overtime desired list or the order of rotation that management used from September to October 2002. The information requested is relevant and necessary to the processing of a grievance. Trout equivocally testified that she "would" have given the overtime desired list. Would have, could have, should have is not the same as testifying "I did" give the overtime desired list to the Union when the information was requested. While Trout alleges that the supervisors do not always mark the overtime desired list to show the last person for chosen for overtime, she did not testify that she turned over to the Union the list to show that some but not all were marked. I do not credit Trout's testimony that she told the Union about the order of rotation. She did not make the effort to

explain, to show, and to give the Union an alternative to obtain the information it was seeking. If one takes the testimony of Trout at face value, the Respondent negligently created the situation with respect to the order of rotation and the Union must suffer the consequences. Apparently, the Respondent is taking the position that it does not have to take any responsibility for its negligence. Additionally, Respondent's attorneys appear to take the position that when the Respondent does not provide the information requested, the Respondent does not know that did not provide the information requested. According to them, the Respondent must be told that it is not providing the information requested. Please! With this kind of an approach, it does not appear that the Respondent wants to forthrightly address a continuing problem that is needlessly costing the Union, the public who uses the mail service, and the American taxpayer who "foots the bill" for needless litigation. What happened here was not done in good faith. What happened here involves an attitude. As found by the Board in Postal Service, 337 NLRB 820, note 2, (2002) the USPS has a history of similar violations. Unless and until that attitude changes, this type of needless litigation will continue. Perhaps the only thing that will bring about a change in Respondent's attitude is the contempt power of a United States Court of Appeals.

Collectively paragraphs 10(b), 11 and 12(b) of the complaint allege that on or about May 12, the Charging Party, in writing, requested a copy of the OMSS report for the last 12 months, May 12, 2002 to May 12, 2003; that the information is necessary for and relevant to the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the unit; and that since about May 12 the Respondent has failed to timely furnish the Charging Party with this information. In its amended answer to the complaint the Respondent (a) admits that on or about May 12, the Charging Party, in writing, requested a copy of the OMSS report, but (b) denies the request was for the last 12 months, May 12, 2002 to May 12, 2003.

General Counsel on brief contends that Reddick failed to pursue the requested information with due diligence in that it took her 13 weeks to provide the reports to the Union, far after the deadline by which the Union needed the OMSS report; that Reddick did not inform the Union why it was taking so long to obtain the report; that Reddick provided the report only after Baker, well after Reed's request, requested this same information and when he did not get it he filed an unfair labor practice charge against the Respondent with the Board; that Reddick should have known that the OMSS reports must be submitted to the Union given that they were involved in the prior case of which she had knowledge; that in Postal Service, 308 NLRB 547 (1992) the Board found a four week delay untimely; that in Woodland Clinic, 331 NLRB 735, 736 (2000) the Board concluded that an unreasonable delay in furnishing information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all; and that neither Robinette's nor Trout's logs contain an entry for the request for the OMSS report.

The Respondent argues that management's delay after making attempts to retrieve an unfamiliar report not available locally was reasonable under the circumstances; that neither Trout nor Reddick had ever heard of the report; that Reddick had to verify the existence of the report, confirm its relevance, and then determine where she could retrieve the report; that Reddick eventually found a contact in the area that ran the report on August 1, and the Union received the report on August 7; that Reddick made diligent attempts to retrieve the report as quickly as she could; and that considering the nature of the request and the fact that the report was not available locally, the delay was reasonable under the circumstances.

In my opinion, the Respondent violated the Act as alleged in paragraph 10(b) of the complaint to the extent that it did not timely provide the OMSS report. In reading the Respondent's assertions on brief, one gets the impression that the Respondent intended to comply with Reed's request and the Respondent's delay in providing this information to the Union was reasonable. Neither Trout not Robinette listed Reed's request for the OMSS report in their logs. Notwithstanding the fact that Judge Cullen, regarding the involved Waco facility, previously found that the Organization Management Staffing System (OMSS) Reports are presumptively relevant, and notwithstanding the fact that Respondent did not even file exceptions to this finding, the Respondent had no intention of voluntarily complying with Reed's request for the OMSS report. Indeed, technically the Respondent did not comply with Reed's request. It was not until (a) Baker's later June 13 request, (b) Trout's June 18 denial of that request on the grounds that the Union (notwithstanding Judge Cullen's finding that the report is presumptively relevant) must demonstrate relevance, and (c) Baker's filing a charge with the Board over the denial of this request for information (in addition to a charge filed by Reed regarding the Respondent's refusal to turn over information) that Reddick gave the OMSS report to Baker by letter dated August 7 in which she indicated that the information was being provided notwithstanding Baker's failure to articulate the relevance (even though Judge Cullen found the report to be presumptively relevant). In other words, in addition to an unchallenged Judge's finding, which by June 3 had been enforced by the United States Court of Appeals for the Fifth Circuit, it took two requests and two subsequent charges filed with the Board before USPS would turn over the presumptively relevant information. Shame on the USPS. It has wasted resources that would be better spent resolving genuine issues. The USPS's delay was occasioned not by the nature of the request but rather by Respondent's attitude to delay complying as long as possible.

Collectively paragraphs 10(c), 11 and 12(c) of the complaint allege that on or about May 12, the Charging Party, in writing, requested for the time period of May 5 and 6 a copy of the mail conditions report and how much mail was cancelled; that the information is necessary for and relevant to the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the unit; and that since about May 12 the Respondent has failed to furnish the Charging Party with this information. In its amended answer to the complaint the Respondent admits that on or about May 12, the Charging Party, in writing, requested for the time period of May 5 and 6 a copy of the mail conditions report and how much mail was cancelled.

General Counsel on brief contends that the evidence supports a violation in that Robinette admits that she did not have either request recorded in her log; that while Trout's log shows an

AMER report (mail conditions report) for May 5 and 6 along with other items requested, unlike other entries on this log, the entry for this request does not indicate how many pages were provided to the Union; that Trout admitted that a mail condition report is a one page document; and that Respondent's lack of documentation leads to the conclusion that it did not provide the requested information.

The Respondent argues that the information was provided within a reasonable time; that Trout noted on her log that she gave Reed the information that usually would have gone through Robinette; and that Trout had direct access to the information and she provided it to Reed the same day he walked into her office on May 27.

In my opinion, the Respondent violated the Act as alleged in paragraph 10(c) of the complaint. On the one hand, I found Reed to be a credible witness. His testimony that he never received the documentation showing the amount of mail cancelled and how late it was cancelled on May 5 and 6 is credited. On the other hand, I did not find Trout to be a credible witness. As noted above, she was equivocal with respect to the overtime desired list sought by Reed on May 4. Again she is equivocal with respect to the documentation which would show the amount of mail cancelled on May 5 and 6 and how late it was cancelled. Trout did not unequivocally testify that she gave Reed this documentation. While she had the Union sign for information provided on May 13, see page two of General Counsel's Exhibit 15, Respondent did not produce a similar form signed by Reed to demonstrate that he received the involved documentation on May 27. The last entry on page two of Trout's log is only her notation which allegedly indicates that she gave something to Reed on "5/27/03." It is not Reed's signature indicating how many pages he received. In that regard, except for the involved log entry (and one other which is not related), Trout's log, which has approximately 80 entries, specifies the number of pages given to the Union for each and every information request listed. Neither the first nor the second request for this information is listed on Robinette's log. While she testified that she did receive the second request, Trout equivocated as to whether she received the first request on or about May 12. Trout is not a credible witness. The Respondent has not demonstrated that the Union was given the documentation sought. The information requested is relevant and necessary to the processing of a grievance. The Respondent violated the Act as alleged in paragraph 10(c) of the complaint.

Collectively paragraphs 10(d), 11 and 12(d) of the complaint allege that on or about June 1, the Charging Party, in writing, requested the length of time six level 6 FSM clerk jobs have existed, a list of all employees that work the flat sorter as level 6 clerks and for how long have they worked there, and what other jobs management will abolish and when; that the information is necessary for and relevant to the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the unit; and that since about June 1 the Respondent has failed to furnish the Charging Party with this information. In its amended answer to the complaint the Respondent admits that on or about May 12, the Charging Party, in writing, requested the length of time six level 6 FSM clerk jobs have existed, a list of all employees that work the flat sorter as level 6 clerks and for how long have they worked there, and what other jobs management will abolish and when.

General Counsel on brief contends that the evidence shows that the Respondent failed to provide any of the requested items; that Robinette's log only shows a June 1 entry for 'abolishment of jobs' and that one page was provided; that Robinette's log is incomplete in that it does not provide at least an index as to what the Respondent provided the Union; that Robinette admitted that the one page provided to the Union was not everything they asked for; and that Trout's log refers to one page in response to the Union's June 1 request for three different categories of information.

The Respondent argues that if the Union was not satisfied with the information that the Respondent gave it the Union should have complained that the information was deficient or made an additional request; that management was not aware that the information was incomplete until the Union filed the initial charge; and that while the Board now claims that some items were missing or not produced, there is no evidence that the Union specified which items they claimed were missing.

Here we go again. Respondent's attorneys on brief argue that Respondent cannot know that it is not providing the information sought unless the Union tells it. So it appears that the Respondent is taking the position that if the Union, as here pertinent, asks (1) how long the six level 6 FSM jobs have existed, (2) for a list of all the employees that work on the flat sorter as level 6 clerks and how long they have worked there, (3) what other jobs will management want to abolish, and (4) when will they abolish these jobs, and the Respondent does not provide this information, the Union must tell the Respondent what information it did not provide. Robinette, who is a secretary, knew that the Respondent did not provide all of the information requested when she testified "from my summary, I know that one page is not everything that they ask[ed] for," (transcript page 96). Reed's testimony that he sought the information and he did not have the information when he filed the grievance is not refuted by the Respondent. Reed's testimony is credited. The information requested is relevant and necessary to the processing of a grievance. The Respondent violated that Act as alleged in paragraph 10(d) of the complaint.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reform Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct, namely failing and refusing to furnish information which is necessary and relevant to the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the above-described unit, Respondent committed unfair labor practices contrary to the provisions of Section 8(a)(5) and (1) of the Act:

(a) Since about May 4 failing and refusing to furnish the Charging Party with a copy of the overtime desired list and the order of rotation that management used to make up the overtime to Alexander.

(b) Since about May 12 failing to timely furnish the Charging Party with a copy of the OMSS report.

(c) Since about May 12 failing to furnish the Charging Party with a copy of the mail conditions report and how much mail was cancelled on May 5 and 6, 2003.

(d) Since about June 1 failing to furnish the Charging Party with the following information: (1) how long the six level 6 FSM jobs have existed, (2) a list of all the employees that work on the flat sorter as level 6 clerks and how long they have worked there, (3) what other jobs will management want to abolish, and (4) when will they abolish these jobs,

4. The above-described labor practices affect commerce within the contemplation of Section 2(6) and (7) of the Act.

THE REMEDY

General Counsel submits that given the evidence which supports a finding that Respondent has a proclivity to violate the Act, the granting of the special remedies described in paragraph 14 of the complaint is particularly appropriate in this case, along with any other relief deemed appropriate. Paragraph 14 of the complaint reads as follows:

> General Counsel seeks, as additional remedies to the unfair labor practices alleged above, that Respondent be ordered to read the Notice to Employees in the presence of a Board Agent at its facility located at 430 W. State Hwy. 6, Waco Texas 76702, broadly cease and desist from engaging in any and all unlawful conduct, and reinstate all grievances lost by Respondent's failure to provide relevant information.

General Counsel points out that if the Respondent does not provide the requested information by the Step 2 grievance deadline, no additional information can be included; that as a result the grievances at issue in the present case that involved requested information were either lost due to the lack of information or were sent to arbitration; and that, therefore, any remedy that does not provide that lost grievances be reintroduced in the grievance procedure and that the Union be permitted to supplement grievances pending arbitration falls far short of the remedial aims of the Act and would allow Respondent to profit from its misdeeds.

Respondent's witnesses tried to convey the impression that the new manager, Reddick, was concerned about the action the Board had taken, she cared, and she was trying to "straighten out" USPS's act, at least with respect to the Waco office. To see that it is "business as usual," however, one need only read Reddick's above-described August 7 letter and the Respondent's brief herein.

The violations found herein occurred subsequent to a Board order and they were not remedied by the Respondent even after the United States Court of Appeals for the Fifth Circuit enforced the Board's order. Indeed, only after additional charges were filed with the Board was the presumptively relevant OMSS report given to the Union, and even then Reddick wrote "[t]he information is being provided despite your failure to articulate … [its] relevance." In these circumstances, the request of General Counsel that the notice be read will be granted.

In view of the fact that the USPS has demonstrated a proclivity for violating the Act and a genuine disregard for the Charging Party's right to receive relevant and necessary information, I find it necessary to issue a broad cease and desist Order.

General Counsel requests that all grievances lost by Respondent's failure to provide relevant information be reinstated. Whether the involved collective bargaining agreement allows for an arbitrator, in the circumstances extant here, to reopen a proceeding to receive information which USPS unlawfully withheld and will now be ordered to turn over to the Union was not made a matter of record. It is highly unlikely that such a provision exists. As noted above the following provision does exist in Article 31 Section 3 of the involved collective bargaining agreement:

> The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information ….

USPS has not only violated the Act but apparently it has violated this provision of its collective bargaining agreement. Obviously the determination as to whether USPS has violated a provision of the collective bargaining agreement between it and the Union is the prerogative of an arbitrator and not the Board.[5] But it is not clear that even with a finding by an arbitrator that this provision has been violated, could all grievances lost because of Respondent's failure to provide relevant information be reinstated. USPS, by its unlawful conduct, has undermined the effective implementation of the grievance procedure of the involved collective bargaining agreement. The fact that it could get away with this would be an added incentive to continue its unlawful conduct. The last thing that should be done is to encourage in any way a continuation of conduct that will continue to waste what has to be a great deal of money. I do not believe, contrary to the findings of at least one other Judge, that ordering a reinstatement of all grievances lost because of Respondent's refusal and failure to provide relevant information is effectively ordering the waiver of time limitations agreed upon by the parties and incorporated in their collective bargaining agreement. Rather, the situation at hand is somewhat akin to a situation where someone engages in conduct which tolls a statute of limitations. Here USPS in effect has itself tolled the time limitations by its unlawful refusal to turn over the relevant and necessary information to the Union. The Respondent will be ordered to reintroduce in the grievance procedure with the Union grievances that were lost because USPS did not give the above-described information to the Union. The Union will be permitted to supplement those grievances with the information which USPS is ordered to turn over to the Union.

While initially one could be hopeful that USPS would "straighten out its act" and start complying with the law, at some point reality must set in. When it does, a determination must be made as to what action is appropriate under the cir-

[5] In anticipation of a possible argument by the Respondent, it should be noted that as pointed out in *Postal Service*, 302 NLRB 918 (1991), issues regarding a refusal to supply information are not subject to deferral.

cumstances. If USPS is not going to "clean up its act," what incentive could the Board provide USPS?. Neither General Counsel nor the Charging Party have requested it, and so, while I have considered it, it would not be appropriate for me, sua sponte, to recommend that USPS be ordered to pay the Board and the Charging Party for the litigation costs of this proceeding, and the costs the Charging Party has already suffered in those grievance procedures it ultimately wins with the information the Respondent is ordered herein to turn over to the Union. It appears that USPS's continued conduct has become "outrageous" not only in the context of this case but especially when one considers its actions in the context of the many other needs the people of the United States have for the funds that are being wasted on trying to convince USPS to act lawfully. Additionally, there is a question as to whether we are now dealing with willful disobedience of a court order on the part of USPS. J.P. Stevens & Co., Inc., 244 NLRB 407 (1979), enf'd and remanded, 668 F.2d 767 (4th Cir. 1982); J.P. Stevens & Co.v. NLRB, 458 U.S. 1118 (1982); and Summit Valley Indus. v. Carpenters Local 112, 456 U.S. 717 (1982)

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, United States Postal Service, Waco, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from refusing to bargain collectively with the Union by

(a) Since about May 4 failing and refusing to furnish the Charging Party with a copy of the overtime desired list and the order of rotation that management used to make up the overtime to Beverly Alexander.

(b) Since about May 12 failing to timely furnish the Charging Party with a copy of the OMSS report.

(c) Since about May 12 failing to furnish the Charging Party a copy of the mail conditions report and how much mail was cancelled on May 5 and 6, 2003.

(d) Since about June 1 failing to furnish the Charging Party with the following information: (1) how long the six level 6 FSM jobs have existed, (2) a list of all the employees that work on the flat sorter as level 6 clerks and how long they have worked there, (3) what other jobs will management want to abolish, and (4) when will they abolish these jobs,

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the American Postal Workers Union, Local 739, AFL-CIO within 7 days of the date of this order all of the information it has unlawfully withheld.

(b) Upon request by the Union, reintroduce in the grievance procedure grievances that were lost because USPS did not give the above-described information to the Union, and accord the Union the opportunity to supplement those grievances with the information which USPS is ordered to turn over to the Union

(c) Within 14 days after service by the Region, post at its facilities in Waco, Texas copies of the attached Notice marked "Appendix."[7] Copies of the Notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since May 4, 2003.

(d) Convene all unit employees during working time at the Respondent's Waco, Texas facilities, and have a responsible management official of the Respondent read the notice to the employees or at the Respondent's option, permit a Board agent, in the presence of a responsible management official of the Respondent, to read the notice to the employees. The Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent at any assembly of employees called for the purpose of reading such notice by an official of the Respondent.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with the american postal workers union local 739, AFL-CIO by failing and refusing to furnish the American Postal Workers Union Local 739, AFL-CIO with a copy of the overtime desired list and the order of rotation that management used to make up the overtime to Beverly Alexander.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union Local 739, AFL-CIO by failing to timely furnish the American Postal Workers Union Local 739, AFL-CIO with a copy of the OMSS report.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union Local 739, AFL-CIO by failing and refusing to furnish the American Postal Workers Union Local 739, AFL-CIO with a copy of the mail conditions report and how much mail was cancelled on May 5 and 6, 2003.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union Local 739, AFL-CIO by failing and refusing to furnish the American Postal Workers Union Local 739, AFL-CIO with the following information: (1) how long the six level 6 FSM jobs have existed, (2) a list of all the employees that work on the flat sorter as level 6 clerks and how long they have worked there, (3) what other jobs will management want to abolish, and (4) when will they abolish these jobs,

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the American Postal Workers Union Local 739, AFL-CIO all of the information we unlawfully withheld.

WE WILL upon request by the Union, reintroduce in the grievance procedure grievances that were lost because we did not give the above-described information to American Postal Workers Union Local 739, AFL-CIO, and accord American Postal Workers Union Local 739, AFL-CIO the opportunity to supplement those grievances with the information which we will turn over to American Postal Workers Union Local 739, AFL-CIO.

UNITED STATES POSTAL SERVICE